



# Storm Water Phase II Proposed Rule

## An Overview

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*This fact sheet is based on the Storm Water Phase II Proposed Rule. Therefore, the information provided herein is subject to change upon publication of the final Phase II rule in November 1999. A revised series of fact sheets will be provided at that time. A comprehensive list of the current fact sheets is in the text box at left.*

### Why Is Phase II of EPA's Storm Water Program Necessary?

Since the passage of the Clean Water Act (CWA), the quality of our Nation's waters has improved dramatically. Despite this progress, however, degraded waterbodies still exist. According to the 1996 National Water Quality Inventory (Inventory), a biennial summary of State surveys of water quality, approximately 40 percent of surveyed U.S. waterbodies are still impaired by pollution and do not meet water quality standards. A leading source of this impairment is polluted runoff. In fact, according to the Inventory, 50 percent of impaired rivers are affected by urban/suburban and construction sources of storm water runoff.

Phase I of the U.S. Environmental Protection Agency's (EPA) storm water program was promulgated in 1990 under the CWA. Phase I relies on National Pollutant Discharge Elimination System (NPDES) permit coverage to address storm water runoff from: (1) "medium" and "large" municipal separate storm sewer systems (MS4s) generally serving populations of 100,000 or more people, (2) construction sites greater than 5 acres, and (3) ten categories of industrial sources.

The Storm Water Phase II Proposed Rule, published on January 9, 1998, is the next step in EPA's effort to preserve, protect, and improve the Nation's water resources from polluted storm water runoff. The Phase II proposed program would expand the existing Phase I program by requiring additional owners and operators of MS4s in urbanized areas and construction sites, through the use of NPDES permits, to implement programs and practices to control polluted storm water runoff. See Fact Sheets 2.0 and 3.0 for overviews of the proposed Phase II programs for MS4s and construction activity.

Phase II is intended to further reduce adverse impacts to water quality and aquatic habitat by instituting the use of controls on the still unregulated sources of storm water discharges that have the greatest likelihood of causing continued environmental degradation. The environmental problems associated with discharges from MS4s in urbanized areas and discharges resulting from construction activity are outlined below.

#### MS4s in Urbanized Areas

Discharges from MS4s in urbanized areas are a concern because of the high concentration of pollutants found in these discharges. Concentrated development in urbanized areas results in a proliferation of surfaces, such as city streets, driveways, parking lots, and lawns, on which pollutants from concentrated human activities settle and remain until a storm event washes them into nearby storm drains. Common pollutants include pesticides, fertilizers, oils, salt, litter and other debris, and sediment. Another concern is the possible illicit connections of sanitary sewers, which can result in fecal coliform bacteria entering the storm sewer system. Storm water runoff picks up and transports these and other harmful pollutants then discharges them – untreated – to waterways via storm sewer systems. When left uncontrolled, these discharges can result in fish kills, the destruction of spawning habitats, a loss in aesthetic value, and contamination of drinking water supplies and recreational waterways that can threaten public health.

### **Construction Activity**

Uncontrolled runoff from construction sites is a water quality concern because of the devastating effects that sedimentation can have on local waterbodies, particularly small streams. Numerous studies have shown that the amount of sediment transported by storm water runoff from construction sites with no controls is significantly greater than from sites with controls. In addition to sediment, construction activities yield pollutants such as pesticides, petroleum products, construction chemicals, solvents, asphalts, and acids that can contaminate storm water runoff. During storms, construction sites may be the source of sediment-laden runoff, which can overwhelm a small stream channel's capacity, resulting in streambed scour, streambank erosion, and destruction of near-stream vegetative cover. Where left uncontrolled, sediment-laden runoff has been shown to result in the loss of in-stream habitats for fish and other aquatic species, an increased difficulty in filtering drinking water, the loss of drinking water reservoir storage capacity, and negative impacts on the navigational capacity of waterways.

### **What Is the Difference Between the Phase II Proposed Rule and the Interim Phase II Rule?**

The Phase II Proposed Rule, when final, will supersede the interim Phase II storm water rule published on August 7, 1995 (60 FR 40230), which requires all unregulated (non-Phase I) storm water dischargers to apply for NPDES permit coverage by August 7, 2001. The Phase II Proposed Rule would narrow the universe of covered dischargers and extend their deadline for NPDES permit coverage to 3 years and 90 days from the publication of the rule (expected in November 1999).

### **Would Municipally Owned or Operated Sources Exempted by the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 Be Affected by the Proposed Rule?**

Provisions within ISTEA temporarily exempted Phase I industrial activities owned or operated by municipalities with populations less than 100,000 people (with the exception of power plants, airports, and uncontrolled sanitary landfills) from the need to apply for or obtain a storm water discharge permit. Congress extended the permitting moratorium for these facilities to allow small municipalities additional time to comply with NPDES requirements. The interim Phase II rule set a deadline of August 7, 2001, for these facilities to submit a permit application, thereby ending this temporary exemption. The Phase II Proposed Rule would maintain this deadline for all ISTEA-exempted municipally owned or operated industrial activities (e.g., treatment works treating domestic sewage with a design flow of 1.0 mgd or more, or those required to have an approved pretreatment program) to be covered under an NPDES storm water permit.

### **How Was the Phase II Proposed Rule Developed?**

EPA developed the Phase II Proposed Rule during extensive consultations with a cross-section of interested stakeholders brought together on a subcommittee chartered under the Federal Advisory Committee Act, and with representatives of small entities participating in an advisory process mandated under the Small Business Regulatory Enforcement Fairness Act. EPA considered and attempted to address the primary concerns of the participating State, Tribal, municipal, industrial, and environmental representatives in the proposed preamble and rule language.

### **Why Does Part of the Phase II Proposed Rule Use a Question and Answer Format?**

The provisions pertaining to owners or operators of small MS4s were written in a "readable regulation" form that uses the "plain language" method. Questions and answers are used to create more reader-friendly and understandable regulations. The plain language method uses "must" instead of "shall" to indicate a requirement and words like "should," "could," or "encourage" to indicate a recommendation or guidance. Also, the readable regulation format allows guidance to be included with rule requirements. Such guidance is enclosed in parentheses and directly follows the requirements it explains.

### **Who Would Be Covered by the Phase II Proposed Rule?**

The proposal would automatically cover two classes of storm water dischargers on a nationwide basis:

- (1) Owners or operators of small MS4s located in "urbanized areas" as defined by the Bureau of the Census. A "small" MS4 is any MS4 not already covered by Phase I of the NPDES storm water program. See Fact Sheets 2.1 and 2.2 for more information on small MS4 coverage.
- (2) Owners or operators of construction activities that disturb equal to or greater than 1 (one) and less than 5 (five) acres of land. See Fact Sheet 3.0 for more information on construction activity coverage.

### **Waivers**

Phase II dischargers designated on a nationwide basis would be eligible to certify for a waiver from the Phase II program requirements if they meet the necessary criteria. See Fact Sheets 2.1 (small MS4 waiver) and 3.0 (construction waivers) for details.

**Additional Designations by the Permitting Authority**

Small MS4s located outside of urbanized areas and construction activity disturbing less than 1 acre, as well as any non-Phase I industrial sources, could be designated for coverage by the NPDES permitting authority on a case-by-case basis where watershed plans, total maximum daily loads (TMDLs) analyses, or other local water quality assessments identify a need to control these sources of storm water runoff. See Fact Sheet 2.1 for more information on the proposal to require evaluation, and potential designation, of certain small MS4s located outside of urbanized areas.

**What Would Be Required by the Phase II Proposed Rule?**

Owners or operators of Phase II-designated small MS4s and construction activity would be required to apply for NPDES permit coverage, most likely under a general rather than individual permit, and to implement storm water discharge management controls, commonly referred to as best management practices (BMPs). Specific requirements proposed for each type of discharge are listed below.

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**Small MS4s**


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- ☐ A regulated small MS4 owner or operator would need to develop and implement a storm water management program designed to reduce the discharge of pollutants from their MS4 to the “maximum extent practicable” and to protect water quality. The proposal assumes the use of narrative, rather than numeric, effluent limitations in the form of measurable goals.
- ☐ The small MS4 storm water management program would need to include the following six minimum control measures: public education and outreach; public participation/ involvement; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and pollution prevention/good housekeeping. See Fact Sheets 2.3 through 2.8 for more information on each measure, including BMPs and measurable goals.
- ☐ A regulated small MS4 owner or operator would need to include their selection of BMPs and measurable goals for each minimum measure in their permit application. The evaluation and assessment of those chosen BMPs and measurable goals would then need to be included in periodic reports to the NPDES permitting authority. See Fact Sheet 2.9 for more information on permitting and reporting.

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**Construction Activity**


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- ☐ The specific requirements for storm water controls on Phase II construction activity would be defined by the NPDES permitting authority on a State-by-State basis.
- ☐ It is anticipated that NPDES permitting authorities would use their existing Phase I general permits for construction activity as a guide for their Phase II permits. If this occurs, a storm water pollution prevention plan would likely need to be developed for each construction site. See Fact Sheet 3.0 for more information on potential program requirements and appropriate BMPs for Phase II construction activity.

**What Is the Proposed Phase II Program Approach?**

The proposed Phase II program, based on the use of federally enforceable NPDES permits:

- ☐ Encourages the use of general permits;
- ☐ Provides flexibility for regulated owners and operators to determine the most appropriate storm water controls;
- ☐ Allows for the recognition and inclusion of existing NPDES and non-NPDES storm water programs in Phase II permits;
- ☐ Includes public education and participation efforts as primary elements of the small MS4 program;
- ☐ Attempts to facilitate and promote watershed planning and to implement the storm water program on a watershed basis; and
- ☐ Works toward a unified and comprehensive storm water program with the existing NPDES Storm Water Phase I program.

**How Would the Phase II Proposed Rule Address the Phase I Industrial “No Exposure” Provision?**

In addition to the designation of two classes of new sources, Phase II addresses the “no exposure” provision originally included in the 1990 regulations for Phase I of the NPDES storm water program (see 40 CFR 122.26(b)(14)). This provision was remanded to EPA for further rulemaking and, subsequently, included in its revised form in the Phase II proposal.

Under the proposal, a conditional no exposure exemption would be made available to owners or operators of *all* categories of Phase I regulated industrial activity (except category (x) construction activity and facilities individually designated by the NPDES permitting authority) who can certify that industrial materials, material handling operations, and industrial processes are not exposed to storm water. The proposal includes a *No Exposure Certification Checklist* that is intended to be submitted to the NPDES permitting authority for approval. See Fact Sheet 4.0 for more information on the no exposure exemption.

## What Is the Proposed Phase II Program Implementation “Tool Box?”

EPA is committed to providing tools to facilitate implementation of the final Phase II storm water program in an effective and cost-efficient manner. The “tool box” is expected to include the following components:

- ⇒ Fact Sheets;
- ⇒ Guidance Documents;
- ⇒ Information Clearinghouse/Web Site;
- ⇒ Training and Outreach Efforts;
- ⇒ Technical Research; and
- ⇒ Support for Demonstration Projects.

EPA plans to have a preliminary working toolbox in place by the time the final Phase II rule is published. Three years after publication of the final rule, when the general permits are issued, a fully operational tool box is scheduled to be available.

In addition to these tools, the American Public Works Association (APWA) currently is conducting introductory workshops on the Storm Water Phase II Proposed Rule. For more information on workshop dates, locations, and registration, call APWA at 202 393-2792, or visit: [www.apwa.net/education/edu-3202.htm](http://www.apwa.net/education/edu-3202.htm).

## What Is the Proposed Phase II Schedule?

- ❑ The final Phase II rule is scheduled for publication in the *Federal Register* in November 1999.
- ❑ The Conditional No Exposure Exemption option would be available immediately upon publication of the final rule.
- ❑ The NPDES permitting authority would issue general permits for Phase II-designated small MS4s and construction activity within 3 years from the date of publication of the final rule.

- ❑ Owners or operators of Phase II-designated small MS4s and construction activity would obtain permit coverage within 3 years and 90 days of publication of the final rule.
- ❑ The regulated small MS4s would fully implement their storm water management programs by the end of the first permit term, typically a 5-year period.

## For Additional Information

### Contacts

- ☞ U.S. EPA Office of Wastewater Management
  - Phone : 202 260-5816
  - E-mail: SW2@epa.gov
  - Internet: [www.epa.gov/owm/sw2.htm](http://www.epa.gov/owm/sw2.htm)

- ☞ Your NPDES Permitting Authority. (A list of names and telephone numbers for each U.S. EPA Region is included in Fact Sheet 2.9. This list, including State storm water contacts, can be obtained by contacting the U.S. EPA Office of Wastewater Management.)

### Reference Documents

- ☞ Storm Water Phase II Proposed Rule Fact Sheet Series.
  - Contact the U.S. EPA Water Resource Center at 202 260-7786 or at [waterpubs@epa.gov](mailto:waterpubs@epa.gov)
  - Internet: [www.epa.gov/owm/sw2.htm](http://www.epa.gov/owm/sw2.htm)
- ☞ Storm Water Phase II Proposed Rule, published on Jan. 9, 1998 in the *Federal Register* (63 FR 1536).
  - Internet: [www.epa.gov/owm/sw2.htm](http://www.epa.gov/owm/sw2.htm)